

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-3
SUBSTANTIVE REGULATIONS**

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**560-7-3-.09 Corporations and Organizations Exempt from Tax.
Amended.**

(1) Request for exempt status:

(a) For taxable years beginning before January 1, 2008, any organization which is exempt from federal income taxation pursuant to Sections 501(c), 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986 and is requesting recognition of exemption from Georgia income tax under the provisions of O.C.G.A. § 48-7-25 must file with the State Revenue Commissioner a copy of the determination letter received by such organization from the Internal Revenue Service, along with a completed Form 3605, "Application for Recognition of Exemption." Such request shall be made by an officer of the organization. Additional information may be required of the exempt organization, as the Commissioner deems reasonably necessary. However, those organizations which have exempt status in effect under Sections 501(c), 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986 on January 1, 1987, shall

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retain the exempt status unless such status is revoked as provided in O.C.G.A. § 48-7-25 and this rule.

1. For taxable years beginning on or after January 1, 2008, an organization which is exempt from federal income taxation pursuant to Sections 501(c), 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986 shall be deemed to have similar exempt status for purposes of Code Section 48-7-21. A copy of the Internal Revenue Service determination letter, along with a copy of all formation documents must be attached to the applicable, initial exempt organization tax return filed with the State of Georgia. Additionally, copies of the determination letter and all formation documents must also be retained by the organization and be available upon request.

(b) The provisions of subsection (a) of O.C.G.A. § 48-7-25 are not applicable to pension, profit-sharing or stock bonus plans. The special provisions for these plans are as follows:

1. If a trust forming a part of a pension, profit-sharing or stock bonus plan, exempt under the provisions of the Internal Revenue Code Section 501(a) and referred to in Internal Revenue Code Section 401(a), had a tax-exempt status on January 1, 1987, such trust may remain exempt for State purposes, without filing any additional application form or Internal Revenue Service determination letter with the Commissioner.

2. For trusts created after January 1, 1987, the filing with the Commissioner of a copy of the determination letter from the Internal Revenue Service, in lieu of filing a separate application for exemption, is sufficient and any such favorable determination letter shall be controlling upon the Commissioner to the same extent and from the effective date thereof as it is upon the Internal Revenue Service. Such determination letter and all formation

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documents must be attached to the initial return filed with Georgia. Copies of the determination letter and all formation documents must also be retained by the organization and be available upon request.

3. The requirements for filing annual returns may be fulfilled by submitting to the Commissioner a copy of the annual report that was filed with the Internal Revenue Service.

(2) For taxable years beginning before January 1, 2008, the State Revenue Commissioner shall examine the request for exempt status and notify the organization in writing of his or her decision. Until a determination letter granting an exempt status is issued by the Department, no exempt status shall exist for any organization pursuant to the provisions of O.C.G.A. § 48-7-25(a)(1). Provided, however, the Commissioner may grant an exempt status retroactively to include that period of time the organization was declared to be exempt by the Internal Revenue Service. The burden is upon the organization to show it is entitled to exempt status.

(a) For taxable years beginning on or after January 1, 2008, while an organization's federal Form 1023 is waiting for approval from the IRS, the organization may operate as a tax-exempt organization. If an annual exempt organization return is due, the organization must file such return, indicating that its application is pending. If the organization has unrelated business income, the organization must also file a Form 600-T. If the Internal Revenue Service issues a retroactive determination, the Department shall generally recognize such retroactive determination date subject to the revocation provisions included in O.C.G.A. § 48-7-25 and this rule.

(3) For taxable years beginning before January 1, 2008, if the Commissioner denies an exempt status, the reasons for denial shall

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be set forth in writing and a copy of the reasons provided to the organization. The organization may file a petition for redetermination. Such petition must be filed within 30 days of the date the Commissioner notifies the organization of his or her adverse determination, unless the time period for filing the petition for review is extended by mutual agreement between the organization and the Commissioner. The petition shall set forth the contentions of the organization, including any arguments of fact or law which may entitle it to exempt status in Georgia. The Commissioner may grant a conference with respect to the petition, if requested by the organization in such petition.

(4) The Commissioner may revoke the exempt status of any organization in accordance with O.C.G.A. § 48-7-25 and this rule. The reasons for revocation shall be set forth in writing and a copy of the reasons provided to the organization. The organization may file a petition for redetermination. Such petition must be filed within 30 days of the date the Commissioner notifies the organization of his or her revocation, unless the time period for filing the petition for review is extended by mutual agreement between the organization and the Commissioner. The petition shall set forth the contentions of the organization, including any arguments of fact or law which may entitle it to exempt status in Georgia. The Commissioner may grant a conference with respect to the petition, if requested by the organization in such petition.

(5) Annual requirement of filing forms:

(a) All exempt organizations, described in O.C.G.A. § 48-7-25(a)(1), which have sufficient activity in Georgia to be declared a taxable entity (if not so exempt), shall file annually, with the State Revenue Commissioner, a copy of the form(s) filed annually with the Internal Revenue Service, unless such organization has received written exemption from the filing requirements from the

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Internal Revenue Service. Such filings shall be made within the period prescribed for filing said forms with the Internal Revenue Service. For taxable years beginning on or after January 1, 2008, the initial return filed by an exempt organization described in O.C.G.A. § 48-7-25(a)(1), must include a copy of the determination letter received from the Internal Revenue Service granting exempt status, as well as a copy of all formation documents. The return will be rejected if these required documents are not attached. In addition, the Commissioner may require whatever additional forms and data he or she reasonably deems necessary for the proper administration of the tax laws of this State.

(b) The filing of annual returns as described in subparagraph (a) of this paragraph fulfills the requirement for filing annual returns under the “Georgia Trust Act.”

(6) In addition to the revocation provisions of O.C.G.A. § 48-7-25, an exempt status will also be revoked when the corporation is either voluntarily or involuntarily dissolved.

(7) Upon revocation of exempt status by the Internal Revenue Service for any reason, the organization immediately shall notify the Commissioner, file the necessary tax returns and pay the taxes due as required by law.

(8) An exempt status granted for the purpose of exempting an organization from payment of income taxes to Georgia shall not excuse the filing of any return or the payment of any other taxes required by Georgia law.

(9) Unrelated business income of exempt organizations:

(a) Every exempt organization, having unrelated business income from Georgia sources or from activities within Georgia, shall annually file with the State Revenue Commissioner a copy of the appropriate Federal forms along with Georgia Form 600-T and pay the taxes as provided in O.C.G.A. § 48-7-25, as amended. Such unrelated business income shall be determined pursuant to Internal Revenue Code Section 512. If the unrelated business income is derived in part from Georgia sources or from property owned or business done within this State, and derived in part from property owned or business done outside this State, the tax is imposed only on that portion of the unrelated business income which is reasonably attributable to Georgia sources and property owned and business done within this state, such portion to be determined as provided in O.C.G.A. § 48-7-31. However, only the property, payroll, or receipts (receipts only for taxable years beginning on or after January 1, 2008) attributable to such unrelated business income shall be included in such determination. In the event such exempt organization has a net operating loss, the net operating loss shall be treated in the same manner as provided for in O.C.G.A. § 48-7-21. Any applicable net operating loss (NOL) carryback can be utilized by filing an amended Form 600-T.

(b) Such forms shall be filed with the Commissioner within the period prescribed for filing said forms with the Internal Revenue Service.

(10) Penalties and interest applicable to the tax on unrelated business income will be calculated in the same manner as they are calculated on tax due under O.C.G.A. § 48-7-21.

Authority O.C.G.A. §§ 48-2-12 and 48-7-25.